

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOLKER STROBEL, ET AL. v. UWE RUSCH, ET AL.	Case No. 1:18-cv-00656-RB-JFR
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**MOTION FOR FINAL ORDER REGARDING
PREVIOUS COURT ORDER RE SANCTIONS**

On December 2, 2020, the Court issued an Order noting that “within 14 days after the Court has entered final judgment on the merits of this case Mr. Menhart may file a motion and brief responding to the declaration regarding attorney’s fees and asking the Court to reconsider the amount of the sanctions award.” *See* Dkt. 180 at 16.

Notwithstanding the foregoing, undersigned notes that this case has settled on the merits. Undersigned has not seen the agreement, and does not know the terms, because undersigned no longer represents Defendants. The court never issued any “final judgment on the merits.” Instead, the court issued an order of dismissal on January 13, 2021. *See* Dkt. 204. This Motion follows out of an abundance of caution and to avoid further procedural uncertainty.

The record on this outstanding issue is already substantial. *See e.g.* Dkt. 154, Dkt. 180. In short, undersigned *strongly disagrees* that actions in compliance with the Federal Rules of Civil Procedure are sanctionable, at all, for any amount of money. Nevertheless, undersigned understands that there is disagreement on this issue. Undersigned has also preserved this issue for appeal, is admitted to practice in the Tenth Circuit, and is prepared to undertake appeal as necessary.

Regardless, this remaining procedural appeal will require time, effort, energy and money from all parties, the District Court, and the Tenth Circuit. Accordingly, in a final effort to resolve this matter, undersigned suggests the following resolution:

Undersigned counsel Menhart and Lexero Law (not Defendants, whom Menhart no longer represents), will pay the sum of five hundred dollars (\$500) to Plaintiffs' counsel's law firm within fourteen (14 days) of any court order granting the same. The payment will be made to Plaintiffs' counsel's firm via undersigned's law firm check or electronic transfer. If the court agrees to this resolution, no appeal will be undertaken. This payment will also serve to resolve all issues in this litigation fully and finally.

Undersigned believes that this offer is reasonable and will allow this case to be fully and finally resolved. However, a notice of appeal is due in short order, and undersigned respectfully requests the Court's action on this proposal as soon. Defendants have also presented a proposed order¹ to the Court given the short time frame before a notice of appeal must be filed.

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Respectfully submitted,

/s/ Eric J. Menhart
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Previous Counsel for Defendants/Counter-Plaintiffs, Not Currently Representing any Party

¹ Undersigned is aware that proposed orders are not generally required by the Court, but proposed language is being supplied to the Court as a courtesy in this instance given the time-sensitive nature of the request.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed via ECF and all parties of record were automatically notified via that system.

/s/ Eric J. Menhart

Eric J. Menhart, Esq.